

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, HI, 96813

November 10, 2011

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Land Board Members:

SUBJECT: REQUEST FOR APPROVAL OF INCIDENTAL TAKE LICENSE AND  
HABITAT CONSERVATION PLAN FOR KAHEAWA WIND POWER II, ON  
THE ISLAND OF MAUI, HAWAII

**SUMMARY:**

Submitted for your approval is the Incidental Take License (ITL) and the Habitat Conservation Plan (HCP) for Kaheawa Wind Power II (KWPII), on the island of Maui, Hawai'i. The purpose of the HCP is to provide for avoidance, minimization, mitigation, and monitoring of potential incidental take of four Federally and State-listed threatened and endangered species: the Hawaiian petrel (*Pterodroma sandwichensis*), Newell's shearwater (*Puffinus auricularis newelli*), nēnē or the Hawaiian goose (*Branta sandvicensis*), and Hawaiian hoary bat (*Lasiurus cinereus semotus*). Hereafter, these four species are collectively referred to as the "Covered Species."

**BACKGROUND:**

KWPII proposes to construct and operate a new 21-megawatt (MW) wind energy generation facility consisting of 14 General Electric 1.5-MW wind turbine generators, a battery energy storage system, an overhead electrical collection line, one permanent meteorological tower and one guyed temporary test tower, and other infrastructure, near Kaheawa Pastures above Mā'alaea in the southwestern portion of the Island of Maui, Hawai'i. The proposed project is situated on approximately 143 acres (58 ha) of State Conservation Land southeast of the existing First Wind 30-MW Kaheawa Wind Power (KWP) project. KWP commenced operation in June 2006. Like the KWP project, KWPII would supply wind-generated electricity to Maui Electric Company Ltd.

The requested incidental take levels are as follows:

Common Name	Scientific Name	Tier	Requested Authorization		TMK
			5-year limit	20-year limit	
'Ua'u (Hawaiian petrel)	<i>Pterodroma sandwichensis</i>	Tier 1	8 adults/ immatures and 4 chicks/eggs	19 adults/ immatures and 9 chicks/eggs	TMK: 2-3-6-001
		Tier 2	16 adults/ immatures and 8 chicks/eggs	29 adults/ immatures and 14 chicks/eggs	
'A'o (Newell's shearwater)	<i>Puffinus auricularis newelli</i>	Tier 1	2 adults/ immatures and 2 chicks/eggs	2 adults/ immatures and 2 chicks/eggs	
		Tier 2	5 adults/ immatures and 3 chicks/eggs	5 adults/ immatures and 3 chicks/eggs	
Nēnē (Hawaiian goose)	<i>Branta sandvicensis</i>	Tier 1	8 adults/ immatures and 1 fledgling	18 adults/ immatures and 3 fledglings	
		Tier 2	12 adults/ immatures and 3 fledglings	27 adults/ immatures and 3 fledglings	
'Ōpe'ape'a (Hawaiian hoary bat)	<i>Lasiurus cinereus semotus</i>	Tier 1	6 adults/ immatures and 3 juveniles	6 adults/ immatures and 3 juveniles	
		Tier 2	9 adults/ immatures and 5 juveniles	9 adults/ immatures and 5 juveniles	

To address the potential of incidental take of the covered species, the following mitigation measures are proposed:

Lower (ex:0 take)	Tier 1 mitigation	Tier 2
<b>Hawaiian Petrel</b>		
1. Same as Tier 1.	<p>1. Implement a comprehensive plan for seabird colony management at Makamaka'ole, on West Maui near lower Kahakuloa Valley, that would include predator proof fencing an enclosure, eradication within the enclosures, social attraction and artificial burrows. The success of the social attraction project in establishing a breeding and growing colony will be determined after 5 years and if unsuccessful, additional measures will be implemented till mitigation is commensurate with the requested take.</p> <p>OR</p> <p>2. Participate in the management of the Hawaiian petrel colony breeding in the crater of Haleakalā in an approximately 220 ac (89 ha) area with approximately 100 burrows. This would include contributing to contracting the labor and purchasing equipment (e.g., traps and bait) required to conduct predator trapping in this area (or a section thereof, depending on mitigation requirement), and to conduct monitoring to</p>	Increased mitigation efforts at Makamaka'ole or other suitable seabird nesting sites on Maui.

	document success.	
	OR	
	3. Provide support for colony-based protection and productivity enhancement for Hawaiian petrels at the ATST mitigation site after 2016 when ATST mitigation obligations are fulfilled.	

Lower (ex:0 take)	Tier 1 mitigation	Tier 2
<b>Newell's Shearwater</b>		
1. Same as Tier 1.	<p>1. Implement a comprehensive plan for seabird colony management at Makamaka'ole, on West Maui near lower Kahakuloa Valley, that would include predator proof fencing an enclosure, eradication within the enclosures, social attraction and artificial burrows. The success of the social attraction project in establishing a breeding and growing colony will be determined after 5 years and if unsuccessful, additional measures will be implemented till mitigation is commensurate with the requested take.</p> <p>OR</p> <p>2. Implement predator exclosure and social attraction scenario at an alternative site in East Maui, or implement predator exclosure at an in-situ site at upper Kahakuloa or alternative site on East Maui, if deemed feasible.</p> <p>OR</p> <p>2. Provide support for colony-based protection and productivity enhancement, or social attraction and predator exclusion for Newell's shearwaters on Molokai or Lanai.</p>	Increased mitigation efforts at Makamaka'ole or other suitable seabird nesting sites on Maui, Kauai or elsewhere.

Lower (ex:0 take)	Tier 1 mitigation	Tier 2
<b>Nēnē</b>		
1. Same as Tier 1	1. Fund the building of a new release pen to accommodate spillover of nene from other pens or participate in the translocation of eggs, adults or family groups from Kauai. Additional funding for management of the new pen for the first five years will be provided regardless of take, this includes support for logistics, DOFAW staffing, predator control and vegetation management activities. Perform systematic visual observations of nēnē activity within KWP II site to document how nēnē use the project area following construction.	1. Extend management activities at pen constructed for Tier 1, including support for logistics, DOFAW staffing predator control and vegetation management.

Lower (ex:0 take)	Tier 1 mitigation	Tier 2
<b>Hawaiian Hoary Bat</b>		
1. Same as Tier 1	<p>1a. Conduct surveys to document bat occupancy at different habitat types (e.g., ridges vs. gulches) and elevational ranges at KWP II and vicinity to support Maui bat research.</p> <p>1b. Restoration of bat habitat at an acreage commensurate with the requested take.</p>	<p>1a. Continue surveys to document bat occupancy at different habitat types (e.g., ridges vs. gulches) and elevational ranges at KWP II and vicinity to support Maui bat research.</p> <p>1b. Restoration of additional bat habitat at an acreage commensurate with the requested take.</p>

The HCP also allows for adaptive management. Adaptive management is defined as a formal, structured approach to dealing with uncertainty in natural resources management, using the experience of management and the results of research as an on-going feedback loop for continuous improvement. Adaptive approaches to management recognize that the answers to all management questions are not known and that the information necessary to formulate answers is often unavailable. Adaptive management also includes, by definition, a commitment to change management practices when determined appropriate.

The HCP outlines detailed monitoring and reporting protocols to account for injury or mortality to the covered species, as well as to ensure avoidance, minimization, and mitigation measures are being accomplished and goals and objectives are being met.

The Division released the draft HCP for 60-day public comment period in the January 23, 2010, Office of Environmental Quality Control (OEQC) Environmental Notice. On March 10, 2010, 2011, the Division conducted a public hearing on Maui to receive public comments. During the comment period, the Division received comments from: the Office of Hawaiian Affairs (OHA), the Department of Business Economic Development and Tourism (DBEDT), Sierra Club, the University of Hawaii Environmental Center, and a member of the public. The Division and applicant have addressed comments as necessary as reflected in the HCP.

At the October 21, 2011, Endangered Species Recovery Committee (ESRC) meeting, the ESRC recommended the Board approve the ITL and HCP.

#### HRS CHAPTER 343

The project, which is activities under the HCP, consists of fencing, predator control/trapping, captive propagation, release of goslings, habitat restoration, habitat maintenance, wildlife surveys, and monitoring. The Division's analysis concludes that the project is eligible for an exemption from the need to prepare an environmental assessment.

In accordance with Hawai'i Administrative Rule Section 11-200-8, the Division has reviewed this action and determined it falls under the:

- Department of Land and Natural Resources Department Wide Exemption List (As reviewed and concurred upon by the Environmental Council July, 13 2011) Exemption Class No. 3 "Construction and location of single, new, small facilities or structures and the alteration and modification of same and installation of new, small equipment and facilities and the alteration and modification of same"
  - Item (1) "Fences around or to manage rare, threatened or endangered plants, covered and open areas for endangered species, game birds and mammals; auxiliary buildings for food storage, equipment storage, incubators and brooders; open-top breeding and release pens, field aviaries, hacking boxes, and for watershed and native forest management and restoration. Fences shall contain step-overs or other features that permit pedestrian access for cultural and recreational use"

- Division of Forestry and Wildlife of Exemption List (As reviewed and concurred upon by the Environmental Council June 12, 2008) Exemption Class No. 4 “Minor alteration in the conditions of land, water, or vegetation”
  - Item (3) “Minor alterations to existing wildlife or plant sanctuaries, including construction of pumps and controls, pipes and channels, and dikes and moats for the purposes of maintaining water levels, providing constant water supplies, and precluding predators. Also includes minor alterations to biological transects, camp sites, fertilizing and mowing, maintaining nene pastures, weed control, outplanting native plants, transplanting, clearing mist net lines and trap sites”
- Division of Forestry and Wildlife of Exemption List (As reviewed and concurred upon by the Environmental Council June 12, 2008) Exemption Class No. 5 “Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource”
  - Item (1) “Implanting transponders and affixing transmitters and/or markers (bands, collars, ear tags) to birds and mammals to record movement, longevity; taking disease and blood samples; placing remote monitoring devices (to determine animal movement), cameras, equipment and feeders; removal of non-native avian competitors, predator control (including placement of approved toxic baits, kill traps, live traps, snares) and using approved herbicides”
  - Item (2) “Game and non-game wildlife surveys, inventory studies, new transect lines, photographing, recording, sampling, collection and captive propagation (involves walking, driving, and flying in the field (helicopters, light aircraft), use of nets and firearms, temporary traps including snares, mist nets, corral traps, drop door traps or leg hold traps”
  - Item (3) “Releases and recoveries of wildlife. On approved releases of game and non-game wildlife (after EA or EIS preparation and acceptance), actual release of animals and follow-up surveys, translocation within the range, or rearing in captivity and releasing to the wild”

This action is determined to probably have minimal or no significant effect on the environment.


#### RECOMMENDATION:

The Department recommends that the Board:

1. Declare that, after considering the potential effects of the proposed project as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Approve the Incidental Take License and the Habitat Conservation Plan for Kaheawa Wind Power II, on the island of Maui, Hawai'i by the required two-thirds vote of the authorized membership.

3. Authorize the Chairperson of the Board of Land and Natural Resources to issue the Incidental Take License.


Respectfully submitted,



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Paul J. Conry, Administrator  
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



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WILLIAM J. AILA, Chairperson  
Board of Land and Natural Resources

Attachment: Habitat Conservation Plan

Attachment: Incidental Take License

Attachment: Exemption Declaration

Attachment: Endangered Species Recovery Committee Recommendations

State of Hawai'i  
 Department of Land and Natural Resources  
 Division of Forestry and Wildlife  
 1151 Punchbowl Street, Room 325  
 Honolulu, Hawai'i 96813

Incidental Take License Number: ITL-15  
 Date of Issue: \_\_\_\_\_  
 Valid Until: 20 years from date of issue

## INCIDENTAL TAKE LICENSE

To accompany:

### “Kaheawa Wind Power II Habitat Conservation Plan”

The Board of Land and Natural Resources hereby grants permission under the authority of Hawaii Revised Statutes §§ 195D-2, 195D-4(g), 195D-21 and all other applicable laws to:

#### First Wind Kaheawa Wind Power II, LLC

For take, if such taking is incidental to and not the purpose of the carrying out of an otherwise lawful activity, of the following species:

Common Name	Scientific Name	Tier	Requested Authorization		TMK
			5-year limit	20-year limit	
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## I. GENERAL CONDITIONS

1. This license only authorizes incidental take of the covered species by the licensee on the lands owned or otherwise controlled by Kaheawa Wind Power II, LLC, on the island of Maui, Hawai‘i at the time this license is issued pursuant to the “Kaheawa Wind Power II Habitat Conservation Plan” dated October, 2011 (hereafter “HCP”).
2. This license is valid only if Kaheawa Wind Power II, LLC abides by the terms and conditions of the HCP and ITL for the duration of the permit.
3. This license is valid for species protected by federal law only if accompanied by valid federal authorization.
4. This license shall become valid upon completion of the following:
  - i. A legal representative of Kaheawa Wind Power II, LLC has acknowledged understanding and agreement to abide by its conditions by signing two copies of this license.
  - ii. Both copies of the signed license must be returned to the Division of Forestry and Wildlife. Upon approval by the Chairperson, a copy of the license will be returned to the applicant.
5. The Board may suspend or revoke this license if the HCP is suspended or revoked. The Board may also suspend or revoke this license in accordance with applicable laws and regulations in force during the term of the license.

## II. SPECIAL CONDITIONS

1. The allowable incidental take authorized by this license for the covered species includes observed, unobserved, direct and indirect take as defined in the HCP.



2. The estimation of incidental take for the covered species will be calculated according to adjustments made to the observed direct take according to methods detailed in the HCP, including but not limited to adjustments to include unobserved and indirect take.
3. DLNR will be notified within 3 days of any mortalities, injuries, or disease of the covered species observed on the property. Injured individuals or carcasses will be handled according to guidelines in the HCP.

By: \_\_\_\_\_

Date \_\_\_\_\_

William J. Aila, Chairperson and Member  
Board of Land and Natural Resources

The undersigned has read, understands, and hereby agrees to abide by the General Conditions and the Special Conditions stipulated in this license.

First Wind  
Kaheawa Wind Power II, LLC

By: \_\_\_\_\_

Date \_\_\_\_\_

Its: \_\_\_\_\_

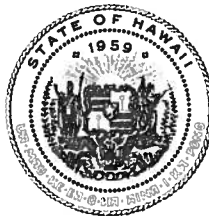
First Wind Kaheawa Wind Power II, LLC 's notarized signature is attached and made a part of this document.

Cc: DOFAW

DOCARE

USFWS Pacific Islands Office, Honolulu

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
DIVISION OF FORESTRY AND WILDLIFE  
1151 PUNCHBOWL STREET, ROOM 325  
HONOLULU, HAWAII 96813

WILLIAM J. AILA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI  
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AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
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CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**Exemption Notification**

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title	Habitat Conservation Plan for Kaheawa Wind Power II Wind Energy Generation Facility
Project Description	Activities under the Habitat Conservation Plan for Kaheawa Wind Power II Wind Energy Generation Facility <ul style="list-style-type: none"> <li>Specifically:</li> <li>Fencing</li> <li>Predator control/trapping</li> <li>Captive propagation</li> <li>Release of goslings</li> <li>Habitat restoration</li> <li>Habitat maintenance</li> <li>Wildlife surveys and monitoring</li> </ul>
Chapter 343 Triggers	Use of state land Use of state funds Use of conservation district
Exemption Class and Description	Department of Land and Natural Resources Department Wide Exemption List (As reviewed and concurred upon by the Environmental Council July, 13 2011):  Exemption Class No. 3: Construction and location of single, new, small facilities or structures and the alteration and modification of same and installation of new, small equipment and facilities and the alteration and modification of same  (1) Fences around or to manage rare, threatened or endangered plants, covered and open areas for endangered species, game birds and mammals; auxiliary buildings for food storage, equipment storage, incubators and brooders; open-top breeding and release pens, field aviaries, hacking boxes, and for

watershed and native forest management and restoration. Fences shall contain step-overs or other features that permit pedestrian access for cultural and recreational use.

Division of Forestry and Wildlife of Exemption List (As reviewed and concurred upon by the Environmental Council June 12, 2008):

Exemption Class No. 4: Minor alteration in the conditions of land, water, or vegetation

(3) Minor alterations to existing wildlife or plant sanctuaries, including construction of pumps and controls, pipes and channels, and dikes and moats for the purposes of maintaining water levels, providing constant water supplies, and precluding predators. Also includes minor alterations to biological transects, camp sites, fertilizing and mowing, maintaining new pastures, weed control, outplanting native plants, transplanting, clearing mist net lines and trap sites.

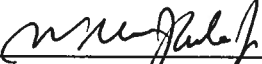
Exemption Class No. 5: Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource

(1) Implanting transponders and affixing transmitters and/or markers (bands, collars, ear tags) to birds and mammals to record movement, longevity; taking disease and blood samples; placing remote monitoring devices (to determine animal movement), cameras, equipment and feeders; removal of non-native avian competitors, predator control (including placement of approved toxic baits, kill traps, live traps, snares) and using approved herbicides.

(2) Game and non-game wildlife surveys, inventory studies, new transect lines, photographing, recording, sampling, collection and captive propagation (involves walking, driving, and flying in the field (helicopters, light aircraft), use of nets and firearms, temporary traps including snares, mist nets, corral traps, drop door traps or leg hold traps.

(3) Releases and recoveries of wildlife. On approved releases

	of game and non-game wildlife (after EA or EIS preparation and acceptance), actual release of animals and follow-up surveys, translocation within the range, or rearing in captivity and releasing to the wild.
Recommendation	It is anticipated the project will probably have minimal or no significant effects on the environment and is presumed to be exempt from the preparation of an environmental assessment.

  
 William J. Aila, Chairperson  
 Board of Land and Natural Resources

10/28/11  
 Date

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
DIVISION OF FORESTRY AND WILDLIFE  
1151 PUNCHBOWL STREET, ROOM 325  
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ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

November 10, 2011

TO: Honorable Chairperson and Members  
Board of Land and Natural Resources

FROM: Endangered Species Recovery Committee (ESRC)

William J. Aila, Department of Land and Natural Resources (DLNR)  
Loyal Meyerhoff, United States Fish and Wildlife Service (FWS)  
Gordon Tribble, United States Geological Survey (USGS)  
Cliff Morden, University of Hawaii Environmental Center  
Patrick Hart, Appointed Member  
John Harrison, Appointed Member

SUBJECT: Recommendation of Approval of the Incidental Take License and the Habitat  
Conservation Plan for Kaheawa Wind Power II, on the island of Maui, Hawai'i

The Endangered Species Recovery Committee recommended approval of the Incidental Take  
License and the Habitat Conservation Plan for Kaheawa Wind Power II, on the island of Maui,  
Hawai'i at the October 21, 2011 meeting.

Prepared and Submitted by:

  
\_\_\_\_\_  
Scott Fretz, DLNR ESRC Designee